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December 13, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA MESSENGER

Magalie Roman Salas

Secretary

Federal Communications Commission

445 12th Street, S.W.

Washington, D.C. 20554

Re: Notice of Ex Parte Presentation (CC 95-155)

Dear Ms. Salas:

Enclosed please find two (2) copies of a letter sent today to Blaise Scinto, Deputy Chief, Network Services Division, Common Carrier Bureau, concerning the above-captioned docket.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Heather L. McDowell (ps)

Heather L. McDowell

Enclosures

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Ian D. Volner
(202) 962-4814

December 13, 1999

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Blaise Scinto
Deputy Chief, Network Services Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Suite 6-A207
Washington, D.C. 20554

Re: CC Docket 95-155 - Toll-Free Service Access Codes

Dear Ms. Scinto:

On behalf of The Direct Marketing Association ("The DMA"), I am writing to request an opportunity to meet with you and your staff to discuss problems that have ensued following the Commission's decision that vanity and branded toll-free numbers be assigned only on a first-come, first-serve basis,¹ and potential solutions to these problems. We understand that Commission staff anticipates that numbers in the next toll-free service access code (SAC) – 866 – might be released for reservation and assignment as early as Spring 2000. It is imperative that the Commission takes steps before this next generation of toll-free numbers is introduced to rectify the inequities inherent in its current approach and to prevent the threat of further compounding the difficulties that subscribers and others face when numbers in the 866 SAC becomes available.

The issues we would like to discuss with you stem from the combined effects of the Commission's first-come, first-serve policy and its restriction on brokering toll-free numbers.² The current regulatory scheme deprives incumbent toll-free vanity number subscribers of any effective means to protect the substantial investment they make in promoting these numbers to maximize reputation and brand recognition. When 877

¹ In re Toll Free Service Access Codes, *Fourth Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd. 9058 (1998) ("Fourth Toll-Free Order").

² 47 C.F.R. §§ 52.111, 107. See also *Fourth Toll-Free Order*; In re Toll Free Service Access Codes, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd. 11162 (1997) ("Second Toll-Free Order").

numbers were released in April 1998, as The DMA and numerous other parties warned, the first-come, first-serve approach resulted in chaos. Subscribers and RespOrgs scrambled in a race to reserve the most valuable, best-recognized toll-free number sequences. There are numerous reports that the database itself was inexplicably inaccessible to some RespOrgs. In the end, prized numbers went to the luckiest subscribers, or to the ones with greatest influence over their RespOrg, or (notwithstanding the anti-brokering rules) to the highest bidders.

The Commission has suggested that courts afford the proper recourse and remedy for vanity-number subscribers with concerns or disputes about another party's use of a similar or complementary toll-free number. Yet, courts have admonished subscribers for failing to subscribe to a complementary number in denying such relief. These decisions will engender an acceleration of number exhaust. At the same time, the Commission's anti-brokering rules prevent subscribers from lawfully taking steps to protect themselves by working out acceptable exchanges that serve all affected parties' needs.

The DMA opposed the first-come, first-serve approach during the initial proceedings in this docket, and has asked that the Commission reconsider that rule.³ We continue to believe that offering incumbent subscribers of vanity numbers a limited right-of-first-refusal would more effectively and equitably balance the need to safeguard incumbent subscribers' interests by respecting the investment they make in their vanity or branded numbers, and the importance of protecting against premature toll-free number exhaust. Yet, the complaints filed before the Commission to date make clear that more is needed. Therefore, we have come to believe that more dramatic revisions are necessary, including the elimination of the rule prohibiting brokering, to enable subscribers to rely on market-based solutions to meet their toll-free needs on a case-by-case basis. Indeed, this alternative has also been proposed by other parties in the Commission's toll-free proceedings.⁴

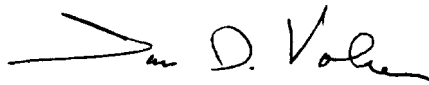
³ *Joint petition for Reconsideration of The Direct Marketing Association and the American Car Rental Association*, In re Toll-Free Service Access Codes, CC Docket No. 95-155 (May 4, 1998); *Joint Emergency Petition for Temporary Stay and Set-Aside of Certain Vanity and Branded Numbers in the 877 Service Access Code of The Direct Marketing Association and the American Car Rental Association*, (April 2, 1998); *Supplemental Reply Comments of The Direct Marketing Association* (July 28 (1997); *Supplemental Comments of The Direct Marketing Association* (July 21, 1997); *Comments of The Direct Marketing Association* (November 1, 1995).

⁴ *See, e.g. Supplemental Petition for Reconsideration of TLDP Communications, Inc.*, CC Docket 95-155 (June 26, 1998).

In order to discuss these issues with you in more detail and respond to any questions that you may have, Jerry Cerasale, Senior Vice President of Government Affairs for The DMA, and I would like to arrange a meeting with you and your staff at the first convenient opportunity. We will call your office within the next week to find out what arrangement would best fit your schedule.

We appreciate your attention to this matter, and look forward to meeting with you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ian D. Volner". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Ian D. Volner

cc: Office of the Secretary